

APPEAL NO. 020552
FILED APRIL 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 4, 2002. The appellant (claimant) did not appear at the CCH, but his attorney made an appearance on his behalf. The hearing officer's decision and order states that the claimant was sent a ten-day letter to show cause why he did not appear at the CCH and that the claimant did not respond. The hearing officer determined that the claimant did not sustain a compensable injury on _____. The claimant appealed, arguing that the hearing officer erred in determining compensability and that she abused her discretion. The respondent (carrier) filed a response urging affirmance of the hearing officer's determination.

DECISION

Affirmed.

The claimant's attorney argued that the evidence showed that the claimant sustained a compensable injury on _____, when a coworker rubbed his neck and back; that the claimant has a preexisting condition, facet syndrome; that the claimant's preexisting condition was aggravated by the coworker rubbing his neck and back; and that the medical evidence shows that the claimant sustained a new and separate compensable injury on _____.

The medical reports in evidence show that on July 12, 1997, the claimant sought treatment from Dr. G and was diagnosed with facet syndrome and other conditions related to his hip and back. The claimant continued to treat with Dr. G before and after the alleged incident of _____, for the same hip and back complaints as were treated on July 12, 1997. The medical reports of Dr. G reflect that the claimant initially complained of neck pain on January 17, 1998, and throughout 1998, the claimant complained of muscle spasms, swollen hands, neck, upper back, upper hip, feet, and leg pains. A thoracic spine MRI dated September 9, 1998, reflects "[m]inimal annular bulging or spondylosis but no disc herniation." A cervical spine MRI dated September 9, 1998, reflects "[n]o disc herniation. Minimal spondylosis but no disc herniation." On December 7 and 21, 1998, the claimant had diagnostic medial branch facet and therapeutic steroid injection procedures performed to treat his cervical facet syndrome; and on January 18 and 25, 1999, and January 24 and 31, 2000, the claimant had trigger point injections to treat his myofascial syndrome. A cervical spine MRI dated on March 16, 1999, reflects "no significant posterior disc bulge or disc herniation. There is no significant concentric cord stenosis or nerve root compression." A cervical spine MRI dated on April 1, 1999, reflects "[n]o change in the architecture of the cervical spine was seen." A CT scan dated December 13, 1999, reflects "very minimal degenerative change is present."

The hearing officer did not err in determining that the claimant did not sustain a

compensable injury. The claimant has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer was not persuaded by the medical records in evidence that the claimant sustained a compensable injury in the course and scope of his employment on _____. We are satisfied that the hearing officer's injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As for the claimant's further contention that the hearing officer abused her discretion in determining that the claimant did not sustain a compensable injury based on the medical evidence, we find no abuse of discretion (Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986)).

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge